

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 846**

---

**Introduced by Assembly Member Torrico**

February 26, 2009

---

An act to add Sections 25196.5 and 42402.6 to the Health and Safety Code, to add Section 6437 to the Labor Code, and to add Section 13363 to the Water Code, relating to civil and administrative penalties.

### LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Torrico. State agencies: civil and administrative penalties.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies.

This bill would require the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to adjust the maximum *and minimum* amounts of specified civil and administrative penalties to take into account inflation on an annual basis using the Consumer Price Index, as provided. The bill would require, if a penalty below these maximum levels is sought, that the penalty be assessed, *at a minimum*, at a level that recovers ~~any~~ economic benefits derived by the violator, except as specified. Because local air districts and unified program agencies would be subject to this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as the  
2 California Civil Penalties Inflation Supplement and Enforcement  
3 Act of 2009.

4 SEC. 2. Section 25196.5 is added to the Health and Safety  
5 Code, to read:

6 25196.5. (a) (1) The department shall adjust on an annual  
7 basis all civil and administrative penalties imposed pursuant to  
8 this chapter to adjust the maximum *and minimum* amounts  
9 specified in this chapter to take into account inflation using the  
10 Consumer Price Index for the month of June of the year prior to  
11 the adjustment as compared with June of the calendar year in which  
12 the amount of the penalty was last established by legislation.

13 (2) The amount of any penalties determined pursuant to this  
14 subdivision shall be rounded as follows:

15 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
16 penalty less than or equal to one hundred dollars (\$100).

17 (B) To the nearest multiple of one hundred dollars (\$100) in the  
18 case of a penalty greater than one hundred dollars (\$100) but less  
19 than or equal to one thousand dollars (\$1,000).

20 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
21 the case of a penalty greater than one thousand dollars (\$1,000)  
22 but less than or equal to ten thousand dollars (\$10,000).

23 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
24 the case of a penalty greater than ten thousand dollars (\$10,000)  
25 but less than or equal to one hundred thousand dollars (\$100,000).

26 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
27 in the case of a penalty greater than one hundred thousand dollars

1 (\$100,000) but less than or equal to two hundred thousand dollars  
2 (\$200,000).

3 (F) To the nearest multiple of twenty-five thousand dollars  
4 (\$25,000) in the case of a penalty greater than two hundred  
5 thousand dollars (\$200,000).

6 (b) If the department or a unified program agency seeks to  
7 impose a penalty below the maximum levels set pursuant to this  
8 chapter, as adjusted by subdivision (a), the department or unified  
9 program agency shall calculate, and make express findings  
10 concerning, the economic benefits, if any, derived by the violator  
11 from the acts that constitute the violation. ~~Liability shall be~~  
12 ~~assessed at a level that recovers those economic benefits, if any~~  
13 *At a minimum, liability shall be assessed at a level that recovers*  
14 *those economic benefits*, unless the department or unified program  
15 agency makes express findings that document that good faith  
16 efforts to comply or inability to pay justify a reduction and that  
17 the liability assessed will maintain the deterrent effect of the  
18 penalty.

19 (c) The department shall report to the Legislature on the  
20 implementation of this section.

21 SEC. 3. Section 42402.6 is added to the Health and Safety  
22 Code, to read:

23 42402.6. (a) (1) The state board shall adjust on an annual  
24 basis all civil and administrative penalties imposed pursuant to  
25 this division to adjust the maximum *and minimum* amounts  
26 specified in this division to take into account inflation using the  
27 Consumer Price Index for the month of June of the year prior to  
28 the adjustment as compared with June of the calendar year in which  
29 the amount of the penalty was last established by legislation.

30 (2) The amount of any penalties determined pursuant to this  
31 subdivision shall be rounded as follows:

32 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
33 penalty less than or equal to one hundred dollars (\$100).

34 (B) To the nearest multiple of one hundred dollars (\$100) in the  
35 case of a penalty greater than one hundred dollars (\$100) but less  
36 than or equal to one thousand dollars (\$1,000).

37 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
38 the case of a penalty greater than one thousand dollars (\$1,000)  
39 but less than or equal to ten thousand dollars (\$10,000).

1 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
2 the case of a penalty greater than ten thousand dollars (\$10,000)  
3 but less than or equal to one hundred thousand dollars (\$100,000).

4 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
5 in the case of a penalty greater than one hundred thousand dollars  
6 (\$100,000) but less than or equal to two hundred thousand dollars  
7 (\$200,000).

8 (F) To the nearest multiple of twenty-five thousand dollars  
9 (\$25,000) in the case of a penalty greater than two hundred  
10 thousand dollars (\$200,000).

11 (b) If the state board or a district seeks to impose a penalty below  
12 the maximum levels set pursuant to this division, as adjusted by  
13 subdivision (a), the state board or district shall calculate, and make  
14 express findings concerning, the economic benefits, if any, derived  
15 by the violator from the acts that constitute the violation. ~~Liability~~  
16 ~~shall be assessed at a level that recovers those economic benefits,~~  
17 ~~if any~~ *At a minimum, liability shall be assessed at a level that*  
18 *recovers those economic benefits*, unless the state board or district  
19 makes express findings that document that good faith efforts to  
20 comply or inability to pay justify a reduction and that the liability  
21 assessed will maintain the deterrent effect of the penalty.

22 (c) The state board shall report to the Legislature on the  
23 implementation of this section.

24 SEC. 4. Section 6437 is added to the Labor Code, to read:

25 6437. (a) (1) The department shall adjust on an annual basis  
26 all civil and administrative penalties imposed pursuant to this part  
27 to adjust the maximum *and minimum* amounts specified in this  
28 part to take into account inflation using the Consumer Price Index  
29 for the month of June of the year prior to the adjustment as  
30 compared with June of the calendar year in which the amount of  
31 the penalty was last established by legislation.

32 (2) The amount of any penalties determined pursuant to this  
33 subdivision shall be rounded as follows:

34 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
35 penalty less than or equal to one hundred dollars (\$100).

36 (B) To the nearest multiple of one hundred dollars (\$100) in the  
37 case of a penalty greater than one hundred dollars (\$100) but less  
38 than or equal to one thousand dollars (\$1,000).

1 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
2 the case of a penalty greater than one thousand dollars (\$1,000)  
3 but less than or equal to ten thousand dollars (\$10,000).

4 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
5 the case of a penalty greater than ten thousand dollars (\$10,000)  
6 but less than or equal to one hundred thousand dollars (\$100,000).

7 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
8 in the case of a penalty greater than one hundred thousand dollars  
9 (\$100,000) but less than or equal to two hundred thousand dollars  
10 (\$200,000).

11 (F) To the nearest multiple of twenty-five thousand dollars  
12 (\$25,000) in the case of a penalty greater than two hundred  
13 thousand dollars (\$200,000).

14 (b) If the division seeks to impose a penalty below the maximum  
15 levels set pursuant to this part, as adjusted by subdivision (a), the  
16 division shall calculate, and make express findings concerning,  
17 the economic benefits, if any, derived by the violator from the acts  
18 that constitute the violation. Notwithstanding any other provision  
19 of law, ~~liability shall be assessed at a level that recovers those~~  
20 ~~economic benefits, if any~~ *at a minimum, liability shall be assessed*  
21 *at a level that recovers those economic benefits*, unless the division  
22 makes express findings that document that good faith efforts to  
23 comply or inability to pay justify a reduction and that the liability  
24 assessed will maintain the deterrent effect of the penalty.

25 (c) The department shall report to the Legislature on the  
26 implementation of this section.

27 SEC. 5. Section 13363 is added to the Water Code, to read:

28 13363. (a) (1) The state board shall adjust on an annual basis  
29 all civil and administrative penalties imposed pursuant to this  
30 division to adjust the maximum *and minimum* amounts specified  
31 in this division to take into account inflation using the Consumer  
32 Price Index for the month of June of the year prior to the  
33 adjustment as compared with June of the calendar year in which  
34 the amount of the penalty was last established by legislation.

35 (2) The amount of any penalties determined pursuant to this  
36 subdivision shall be rounded as follows:

37 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
38 penalty less than or equal to one hundred dollars (\$100).

1 (B) To the nearest multiple of one hundred dollars (\$100) in the  
2 case of a penalty greater than one hundred dollars (\$100) but less  
3 than or equal to one thousand dollars (\$1,000).

4 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
5 the case of a penalty greater than one thousand dollars (\$1,000)  
6 but less than or equal to ten thousand dollars (\$10,000).

7 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
8 the case of a penalty greater than ten thousand dollars (\$10,000)  
9 but less than or equal to one hundred thousand dollars (\$100,000).

10 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
11 in the case of a penalty greater than one hundred thousand dollars  
12 (\$100,000) but less than or equal to two hundred thousand dollars  
13 (\$200,000).

14 (F) To the nearest multiple of twenty-five thousand dollars  
15 (\$25,000) in the case of a penalty greater than two hundred  
16 thousand dollars (\$200,000).

17 (b) If the state board or a regional board seeks to impose a  
18 penalty below the maximum levels set pursuant to this division,  
19 as adjusted by subdivision (a), the state board or regional board  
20 shall calculate, and make express findings concerning, the  
21 economic benefits, if any, derived by the violator from the acts  
22 that constitute the violation. ~~Liability shall be assessed at a level~~  
23 ~~that recovers those economic benefits, if any~~ *At a minimum,*  
24 *liability shall be assessed at a level that recovers those economic*  
25 *benefits*, unless the state board or regional board makes express  
26 findings that document that good faith efforts to comply or inability  
27 to pay justify a reduction and that the liability assessed will  
28 maintain the deterrent effect of the penalty.

29 (c) Except as provided in subdivision (k) of Section 13350 and  
30 paragraph (2) of subdivision (n) of Section 13385, proceeds from  
31 the implementation of subdivision (a) resulting from the increased  
32 amount of a civil penalty shall be deposited in a separate account,  
33 the Clean Water Civil Penalty Inflation Account, which is hereby  
34 created in the General Fund, to be expended, upon appropriation  
35 by the Legislature, consistent with Section 13441.

36 (d) The state board shall report to the Legislature on the  
37 implementation of this section.

38 SEC. 6. If the Commission on State Mandates determines that  
39 this act contains costs mandated by the state, reimbursement to  
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O